

## **§ 81.1**

- 81.52 Answer to notice.
- 81.53 Amendment of notice or answer.
- 81.54 Request for hearing.
- 81.55 Consolidation.
- 81.56 Motions.
- 81.57 Responses to motions and petitions.
- 81.58 Disposition of motions and petitions.

### **Subpart G—Responsibilities and Duties of Presiding Officer**

- 81.61 Who presides.
- 81.62 Designation of hearing examiner.
- 81.63 Authority of presiding officer.

### **Subpart H—Hearing Procedures**

- 81.71 Statement of position and trial briefs.
- 81.72 Evidentiary purpose.
- 81.73 Testimony.
- 81.74 Exhibits.
- 81.75 Affidavits.
- 81.76 Depositions.
- 81.77 Admissions as to facts and documents.
- 81.78 Evidence.
- 81.79 Cross-examination.
- 81.80 Unsponsored written material.
- 81.81 Objections.
- 81.82 Exceptions to rulings of presiding officer unnecessary.
- 81.83 Official notice.
- 81.84 Public document items.
- 81.85 Offer of proof.
- 81.86 Appeals from ruling of presiding officer.

### **Subpart I—The Record**

- 81.91 Official transcript.
- 81.92 Record for decision.

### **Subpart J—Posthearing Procedures, Decisions**

- 81.101 Posthearing briefs: Proposed findings and conclusions.
- 81.102 Decisions following hearing.
- 81.103 Exceptions to initial or recommended decisions.
- 81.104 Final decisions.
- 81.105 Oral argument to the reviewing authority.
- 81.106 Review by the Secretary.
- 81.107 Service on amici curiae.

### **Subpart K—Judicial Standards of Practice**

- 81.111 Conduct.
- 81.112 Improper conduct.
- 81.113 Ex parte communications.
- 81.114 Expeditious treatment.
- 81.115 Matters not prohibited.
- 81.116 Filing of ex parte communications.

### **Subpart L—Posttermination Proceedings**

- 81.121 Posttermination proceedings.

## **45 CFR Subtitle A (10–1–07 Edition)**

### **Subpart M—Definitions**

- 81.131 Definitions.

AUTHORITY: 5 U.S.C. 301 and 45 CFR 80.9(d).

SOURCE: 32 FR 15156, Nov. 2, 1967, unless otherwise noted.

### **Subpart A—General Information**

#### **§ 81.1 Scope of rules.**

The rules of procedure in this part supplement §§ 80.9 and 80.10 of this subtitle and govern the practice for hearings, decisions, and administrative review conducted by the Department of Health and Human Services, pursuant to Title VI of the Civil Rights Act of 1964 (section 602, 78 Stat. 252) and Part 80 of this subtitle.

#### **§ 81.2 Records to be public.**

All pleadings, correspondence, exhibits, transcripts, of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights hearing clerk. Inquiries may be made at the Central Information Center, Department of Health and Human Services, 330 Independence Avenue SW., Washington, DC 20201.

#### **§ 81.3 Use of gender and number.**

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

#### **§ 81.4 Suspension of rules.**

Upon notice to all parties, the reviewing authority or the presiding officer, with respect to matters pending before them, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

### **Subpart B—Appearance and Practice**

#### **§ 81.11 Appearance.**

A party may appear in person or by counsel and participate fully in any

proceeding. A State agency or a corporation may appear by any of its officers or by any employee it authorizes to appear on its behalf. Counsel must be members in good standing of the bar of a State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

**§ 81.12 Authority for representation.**

Any individual acting in a representative capacity in any proceeding may be required to show his authority to act in such capacity.

**§ 81.13 Exclusion from hearing for misconduct.**

Disrespectful, disorderly, or contemptuous language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

**Subpart C—Parties**

**§ 81.21 Parties; General Counsel deemed a party.**

(a) The term party shall include an applicant or recipient or other person to whom a notice of hearing or opportunity for hearing has been mailed naming him a respondent.

(b) The General Counsel of the Department of Health and Human Services shall be deemed a party to all proceedings.

**§ 81.22 Amici curiae.**

(a) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and may contribute materially to the proper disposition thereof. An amicus curiae is not a party and may not introduce evidence at a hearing.

(b) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion a decision is to be made or a prior decision is subject to review. His brief shall be filed and served on each party within the time limits applicable to the party whose position he deems himself to support; or if he does not deem himself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(c) When all parties have completed their initial examination of a witness, any amicus curiae may request the presiding officer to propound specific questions to the witness. The presiding officer, in his discretion, may grant any such request if he believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.

**§ 81.23 Complainants not parties.**

A person submitting a complaint pursuant to § 80.7(b) of this title is not a party to the proceedings governed by this part, but may petition, after proceedings are initiated, to become an amicus curiae.

**Subpart D—Form, Execution, Service and Filing of Documents**

**§ 81.31 Form of documents to be filed.**

Documents to be filed under the rules in this part shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

**§ 81.32 Signature of documents.**

The signature of a party, authorized officer, employee or attorney constitutes a certificate that he has read the document, that to the best of his